IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER
Smt.Anjana Sharma Vs. State of Rajasthan & Ors.
(S.B.C.Writ Petition No.880/02)

Dated:- 18th September, 2006.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. P.P.Choudhary, Advocate for the petitioner.
Mr. J.P.Joshi, Advocate for the respondents.

This writ petition has been filed by Smt. Anjana Sharma with the prayer that the communication dated 26.12.2001 sent to her by the respondent Rajasthan Public Service Commission whereby she was declared illegible for appointment on the post of Lecturer be set aside and the respondents be directed to consider her case for appointment on the post of Lecturer. In the alternative, a prayer has been made that proviso to Schedule-I, item (3) A of the University Grants Commission Regulations,1991 should be read down so as to substitute the date 31.12.1993 for last date of submission of application for appointment.

The petitioner who belongs to O.B.C. category possess the degree of B.Sc. and M.Sc.(Chemistry) from Jodhpur University. She thereafter got herself registered as regular Research Scholar for Ph.D. in the Department of Chemistry, Faculty of Science, J.N.V.University,Jodhpur where she submitted her thesis. Her topic for research was "Mechanism of some Oxidation Reactions by Organic Functions". She was also subjected to viva-voce for the same. The petitioner has placed on record a provisional certificate issued by the Vice Chancellor of the University on 17.1.2002 certifying the fact that she had submitted her Ph.D. Thesis and had also faced the viva-voce on 19.1.2001. It was also stated in the said provisional certificate that the final degree certificate shall be awarded after its conferment by the Senate meeting. The petitioner has stated that examiners have unanimously awarded Ph.D. degree to her and as per proviso to 216E & 216F of the University Ordinance recommendations were placed before the Research Board which has also approved for award of degree to the petitioner as per Ordinance 219. Subsequently the Senate of the University has also approved award of Ph.D. degree . It has been stated that during the pendency of the present writ petition, degree of Ph.D. has been eventually awarded to the petitioner.

The respondent Rajasthan Public Service Commission

vide their advertisement dated 31.5.2001 published in newspaper invited applications for the posts of Lecturer in various subjects. It was provided that only those candidates shall be eligible to apply against the said posts who have secured 55% marks in the post graduation examination. In regard to those candidates who secured the degree of Ph.D. prior to 19th September, 1991, a relaxation to the extent of 5% was provided. Such of the candidates who submitted thesis for award of Ph.D. to the University on or before 31st December, 1993 were also held eligible to apply for appointment on the said post. The petitioner submitted her application for appointment. The R.P.S.C. by their communication dated 26.12.2001 rejected her application on the ground that she had not submitted her thesis for award of degree of Ph.D. on or before 31.12.1993 and further that she has also not qualified any NET/SLET examination and therefore she was not eligible for appointment on the post of Lecturer. Reference has been made to the University Grants Commission(Qualifications required by a person to be appointed to the Teaching Staff of a University & the Institutions Affiliated to it) Regulations, 1991. The University Grants Commissions vide its circular dated 30.1.1990 notified that all those candidates who have secured 55% marks in their Master degree level may be exempted from appearing in the eligibility test for recruitment on the post of Lecturer if the candidate has submitted Ph.D.

thesis upto 30st December, 1992. The Rajasthan Public Service Commission conducted the interviews for appointment on the post of Lecturer from 25.2.2002 to 2.3.2002. Aggrieved by the cut off date 31st December, 1993 and consequent rejection of her candidature, the petitioner has preferred this writ petition with the aforesaid prayers.

The respondent Rajasthan Public Service Commission has contested the matter by filing a detailed reply. In the reply it has been submitted that from a bare perusal of the provisional certificate of Ph.D. dated 17.1.2002 submitted by the petitioner, it would be evident that petitioner submitted her thesis and faced viva-voce on 19.1.2001 and was only granted provisional certificate. She was therefore not eligible for appointment on the post of Lecturer. It has been submitted that the Regulations of 1991 have been framed by the U.G.C. and R.P.S.C. being only recruiting agency has to adhere to Rules of eligibility prescribed therein. It has therefore been submitted that the writ petition may be dismissed.

Even though, the University Grants Commission was arrayed as one of the respondents, in spite of service however it has chosen not to contest the matter. During the pendency of the writ petition, the petitioner has filed an affidavit on 3rd April,

2005. Copy of notification dated 31st July, 2002 issued by the U.G.C. has been placed on record with the aforesaid affidavit. It would be evident from the aforesaid notification that the U.G.C. has replaced the Regulation, 1991 by the Regulation of the year 2000. The cut off date which was earlier prescribed as 31.12.1993 has been changed to 31st December, 2002 so as to now provide that a candidate who has submitted his/her thesis in the concerned subject on or before 31st December, 2002 are exempted from appearing in the NET examinations.

I have heard Mr.P.P.Choudhary, learned counsel for the petitioner and Mr.J.P.Joshi, learned counsel for the respondents and perused the record.

Mr.P.P.Choudhary has argued that proviso to Schedule-I, item (3)A of the Regulations of 1991 has arbitrarily chosen 31.12.1993 as the cut-off date. Providing 31.12.1993 as the cut off date so as to treat all those candidates who submitted their thesis before that date as eligible even though they may not have passed NET examination is per se arbitrary and unreasonable. It has been argued that even though in the case of the petitioner she submitted Ph.D. degree and was subjected to viva-voce on 19.1.2001 before the date of advertisement, she has been denied right of consideration. It has been argued that

the petitioner has been awarded degree of Ph.D before the interviews were conducted. Rule beside being arbitrary is also discriminatory in that many of such candidates who even though may have submitted Ph.D. before last date for receipt of application would yet be treated ineligible. It has got no intelligible differentia behind it in as much as there can be no justification for declining a large number of candidates of a similar benefit who have submitted their Ph.D. thesis after 31.12.1993 but before the last date of submission of the application form. Mr.P.P.Choudhary has alternatively argued that the aforesaid proviso to Schedule-I, item (3) A of the Regulations of 1991 is required to be read down in favour of all those candidates who have submitted their Ph.D. thesis by last date of submission of application form. Mr.P.P.Choudhary has cited various judgments of the Hon'ble Supreme Court in support of his argument on the doctrine of reading down.

On the other hand, Mr.J.P.Joshi, learned counsel for the respondents argued that the R.P.S.C. was perfectly justified in rejecting the application of the petitioner because she was not eligible according to the provisions contained in Rajasthan Educational Services Collegiate Branch) Rules, 1986. It has been argued that the case of the petitioner can be considered only if she had passed N.E.T and had also submitted thesis of

Ph.D. before 31.12.1991. She did not fall in either of the categories. Therefore R.P.S.C. had all the justification in rejecting her candidature. Mr.J.P.Joshi has relied on a Division Bench judgment of this Court in Pankaj Kachhwaha vs. State of Rajasthan(D.B.C.Special Appeal No.864/2000, decided on 5.11.2001) wherein this Court while considering the very same proviso which is impugned in this writ petition, held as under :-

> "The province of this Court would not extend to reframe the scheme of exception carved out by the amending the Rule so as to enlarge or narrow its scope. At best, the Court's task would be to read the provision in a reasonable manner so as to keep away the arbitrariness or incongruity that may apparently be appearing from the provisions and to further the object of such provisions. But it does not fall within the domain of this Court to rewrite the provision in a manner which may appear to the Court to be more palatable. As on facts asserted by the petitioner himself, by no stretch of imagination he could be accommodated in the proviso, the benefit of which he claims, we reach the same conclusion as learned Single Judge, about the dismissal of petition, albeit for different reasons"

So far as the validity of proviso to Schedule-I, item (3)A of the Regulations of 1991 is concerned, I do not deem it appropriate to consider this question not only because the issue has since been rendered only academic particularly when the Regulation of 1991 have been replaced of Regulation of 2000 so as to substitute the cut off date 31.12.1993 by 31.12.2002. Even otherwise, a Division Bench of this Court on considering

the benefit of proviso has taken a view that "The province of this Court would not extend to reframe the scheme of exception carved out by the amending the Rule so as to enlarge or narrow its scope. At best, the Court's task would be to read the provision in a reasonable manner so as to keep away the arbitrariness or incongruity that may apparently be appearing from the provisions and to further the object of such provisions. The Division Bench thereafter further held that "it does not fall within the domain of this Court to rewrite the provision in a manner which may appear to the Court to be more palatable. "

When the proviso in question has not been considered ultra vires to Article 14 of the Constitution of India, there would be no necessity to read it down as has been argued on behalf of the petitioner particularly, when a Division Bench on consideration of the very same proviso has authoritatively ruled that the province of this Court would not extend to reframe the scheme of exception carved out by the amending the Rule so as to enlarge or narrow its scope.

In view of the aforesaid discussion, I do not find any merit in the present writ petition. The same is therefore dismissed.

(MOHAMMAD RAFIQ),J.